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In the Supreme Court of the United States

OCTOBER TERM, 1969

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals, sitting *en banc* (Pet. App. 20a-29a), is not yet officially reported. The Board's decision and order (Pet. App. 51a-62a) are reported at 163 NLRB No. 94, and its decision in the related representation proceeding (Pet. App. 39a-50a) is reported at 158 NLRB 925.

JURISDICTION

The judgment of the court of appeals was entered on April 30, 1969 (Pet. 2). The petition for a writ of certiorari was filed on June 23, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the National Labor Relations Board abused its discretion to determine appropriate collective bargaining units by establishing a unit consisting of the employer's field claim representatives in the metropolitan New York area, rather than a statewide or multi-state unit as requested by the employer.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 *et seq.*), are set forth at pp. 81a-82a of the Appendix to the petition. Also relevant is Section 8(a)(5), which provides:

> Sec. 8(a) It shall be an unfair labor practice for an employer—
>
> (5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

STATEMENT

The home office of petitioner, a large, national insurance company, where basic business, operating,

and personnel policies are made, is located in Bloomington, Illinois.[1] The next highest level of administrative authority is exercised by the Company's 21 regional headquarters located throughout the United States and Canada. The Northeastern Region, headed by a regional vice president and two deputy vice presidents, with offices at Wayne, New Jersey, has jurisdiction over New York, New Jersey, and the New England States (Pet. App. 41a).

The business of the Northeastern Region is conducted by five divisions, including two automobile operating divisions, each headed by a division manager. Similar in structure and function, one automobile division services claims in New York State and the other services claims in New Jersey and New England. Each division has a service section located at Wayne, which performs clerical functions pertaining to the issuance of policies and the collection of premiums. Each division also has an underwriting section located at Wayne, which underwrites new risks and reunderwrites existing business. Finally, each division has a separate claims section which is responsible for the processing, investigation, negotiation, and payment of claims. The two claims sections employ approximately 170 field claim representatives, who are located throughout the Northeastern

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[1] Thus, policies and practices regarding sick leave, group medical, life and other insurance programs, vacations, travel allowances, promotion procedures, and similar conditions of employment are determined by officers located at the Bloomington office (Pet. App. 44a).

Region.[2] Each division manager supervises the claims, service, and underwriting functions of his division, subject to the overall control of the regional vice president, who in turn is responsible to the Company president (Pet. App. 41a-42a).

Immediately below the division manager are the divisional superintendents.[3] In the New York State division, one of the divisional superintendents supervises the claim superintendents (*infra*, p. 5) and claim representatives who are attached to the Nassau and Smithtown offices (the Nassau-Suffolk group); the second supervises those employees who work out of the Queens, Jackson Heights, Brooklyn, and Bronx offices (the Metropolitan group); and the third supervises the offices in the remainder of New York State (the Upstate group). All divisional superintendents are based at Wayne, New Jersey, and visit the offices under their supervision about once every two weeks. The divisional superintendent for the Nassau-Suffolk group oversees 6 supervisors and 29 claim representatives; the divisional superintendent for the Metropolitan group, 8 supervisors and 32 claim representatives; and the Upstate divisional superintendent, 8 supervisors and 42 claim representatives. Each divi-

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[2] These employees investigate, evaluate, negotiate, and settle casualty claims (Pet. App. 42a).

[3] The claims section of the automobile operating division covering New York State has three divisional superintendents, and there are two in the claims section of the New Jersey-New England division. The number of superintendents in each division is subject to change according to the volume of business and the geographic distribution of field claims offices in the division (Pet. App. 42a).

sional superintendent supervises the instruction of new claim personnel with respect to work flow and claim procedures, reviews the performance of employees under his jurisdiction, and makes recommendations respecting their promotion, hiring, and discipline. Moreover, he reviews claim files and can settle claims for amounts beyond the authority of claim superintendents or claim representatives (Pet. App. 42a-43a).

Below the divisional superintendents are 22 claim superintendents, 13 of whom are located at the Wayne office. Each claim superintendent trains and supervises a specified unit of claim representatives in the handling of claim files. Such units range in size from two to seven, and average about five. The 13 non-resident claim superintendents make weekly visits of about two days' duration to offices where their subordinate claim representatives are based. The remaining nine superintendents are located in the claim offices. As a result of this deployment, there are no supervisors stationed in 10 of the field offices in the New York Division, and in two of the other field offices the resident claim superintendents have supervisory jurisdiction only over some of the claim representatives in their respective offices, the other employees being supervised by non-resident superintendents (Pet. App. 43a-44a).

In September 1965, the Insurance Workers International Union, AFL-CIO, filed a representation petition with the Board, pursuant to Section 9(c) of the Act, in which it sought certification as bargaining representative of a unit consisting of the claim

representatives in the Company's six offices in the Metropolitan and Nassau-Suffolk groups.[4] At the representation hearing, the Company moved to dismiss the petition on the ground that the unit sought by the Union was inappropriate and that the appropriate unit should consist of either the claim representatives in the entire Northeastern Region, or, at a minimum, all of those located in New York State.

The Board noted that, in *Quaker City Life Insurance Co.*, 134 NLRB 960, it had concluded that, in view of the autonomous character of the single district office there involved and the overall immediate supervision exercised by the district manager, a unit consisting of the employees in the district office was an appropriate bargaining unit. It found, however, that the present case presented "a significantly different picture of field operating procedure," since "the smallest component of the Employer's business structure which may be said to be relatively autonomous in its operation is not the field claims office, but rather the divisional unit of employees supervised by a Divisional Superintendent. By virtue of the managerial authority reposed in the three Divisional Superintendents, who represent a supervisory focal point for their respective groups of 39, 32, and 29 claim representatives, these functionaries appear to exercise powers most closely analogous to those possessed by the district managers in the earlier cases"

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[4] These offices employ 61 of the 103 claim representatives in the New York automobile operating division and are under the supervision of two of the three divisional superintendents (Pet. App. 45a).

(Pet. App. 46a). Accordingly, the Board concluded that, while a unit comprising all three divisions, as contended for by the Company, would be appropriate for bargaining, each division would also constitute an appropriate unit. The Board further concluded that the unit sought by the Union—a single unit combining only two of the divisions—could be justified on neither geographic nor administrative grounds (Pet. App. 46a-48a). Since separate divisional units were the closest to the unit petitioned for by the Union, the Board directed elections in the following divisional units—"one comprising the four Metropolitan offices, and the other, the two Nassau-Suffolk offices" (Pet. App. 48a).[5]

The Union won the election in the Metropolitan group and lost in the Nassau-Suffolk group. Thereafter, the Company refused to bargain with the Union respecting the Metropolitan group, contending that the unit was inappropriate. The Union filed unfair labor practice charges, and, in the resultant unfair labor practice proceeding, the Board found that the Company had violated Sections 8(a)(5), and (1) of the Act. The Board ordered the Company, *inter alia*, to bargain with the Union upon request (Pet. App. 51a-62a).

A panel of the court of appeals (with one judge dissenting) denied enforcement of the Board's order (Pet. App. 1a-19a). Upon rehearing, the full Court

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[5] The Board conditioned the elections upon the Union's making a sufficient showing of interest in each unit (Pet. App. 48a).

(with two judges dissenting) reversed the panel decision, and enforced the Board's order (Pet. App. 20a-29a).

ARGUMENT

1. Section 9(b) of the Act empowers the Board to decide whether "the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof." Petitioner does not deny that, under this broad grant of authority, the Board may properly find that autonomous divisions within an insurance company, such as the individual district office, constitute appropriate units for collective bargaining purposes. See *Quaker City Life Insurance Co.*, 134 NLRB 960, enforced, 319 F. 2d 690 (C.A. 4). Petitioner's basic contention is that the Board erred in concluding that the unit of employees supervised by a divisional superintendent was sufficiently autonomous to constitute an appropriate bargaining unit (Pet. 12). This issue, turning as it does on the facts of this particular case, which are unlike those in the typical insurance company case (see *supra*, p. 6), does not warrant review by this Court. Compare *National Labor Relations Board* v. *Metropolitan Life Ins. Co.*, 380 U.S. 438.

Nor is a different conclusion required by petitioner's contention (Pet. 12) that the Board "failed to give any weight to petitioner's administrative structure and to the supervisory level in petitioner's organization at which labor relations decisions are made." The Board considered these factors (see Pet.

App. 44a), but concluded that nonetheless the autonomy of the divisional superintendent and his control over the day-to-day work performance of the field claim representatives were sufficient to make the unit supervised by him an appropriate one for collective bargaining purposes. As the court below stated (Pet. App. 24a):

> * * * [T]he leader of the unit chosen is the Company official who directly controls and supervises the day to day work of the employees; under the Company's organization the next larger unit would, on the average, cover a multi-state area; the smallest unit under the Company's organization which has a leader, the regional vice-president, with any formal control over employee policy would cover all of New York, New Jersey, and New England; and the smallest unit where there is substantial control over employee policy, the Bloomington Home Office, is nation-wide. Under these circumstances, the reasonableness of the Board's determination is clear.

Contrary to petitioner's assertion, there is no conflict of decisions. The cases cited by petitioner (Pet. 12-14) are factually distinguishable, as the court below pointed out (Pet. App. 26a). No abuse of the broad discretion conferred on the Board in making unit determinations is involved; its decision in this regard is amply supported by substantial evidence relating to the Company's organizational structure (see Pet. App. 28a). See *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474.

2. Finally, there is no substance to petitioner's contention (Pet. 16) that the arbitrariness of the

Board's unit determination is shown by the fact that it may result in a situation where employees in the same office, doing the same work, are represented by different and competing unions.[6] Such a situation, should it materialize, is not essentially different from that which exists in an industrial plant whenever a less than plant-wide unit is established. If a smaller unit rests on rational grounds, and operates "to assure to employees the fullest freedom in exercising the rights guaranteed by [the] Act" (Section 9(b)), as does the unit here, it is not rendered inappropriate merely because it would be more convenient for the employer to have a larger bargaining unit.

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[6] Subsequent to the Board decision herein, the Company announced its intention to appoint an additional divisional superintendent and to transfer to his jurisdiction, *inter alia*, one claim supervisor and three claim representatives from the Jackson Heights (Metropolitan group) office (Pet. App. 66a).

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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